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FEDERAL COMMUNICATIONS COMMISSION  
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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of )  
 )  
The Use of N11 Codes and Other ) CC Docket No. 92-105  
Abbreviated Dialing Arrangements )

COMMENTS OF THE  
NATIONAL TELEPHONE COOPERATIVE ASSOCIATION

The National Telephone Cooperative Association ("NTCA") submits these Comments in response to the Notice of Proposed Rulemaking in the above proceeding ("Notice") (FCC 92-203), released May 6, 1992. The Federal Communications Commission ("Commission") seeks comments on proposed rule changes that would require local exchange carriers ("LECs") to provide abbreviated dialing arrangements using service codes 211, 311, 511 and 711.

NTCA is an association of over 490 small exchange carriers ("ECs") providing telecommunications services to subscribers and interexchange carriers ("IXCs") throughout rural America. NTCA opposes the proposed rule on the grounds that there is no basis upon which the Commission could conclude that it is in the public interest, and that the proposal to regulate a purely local service is beyond the Commission's jurisdiction.

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**I. THE PUBLIC INTEREST DOES NOT REQUIRE A COMMISSION RULEMAKING AT THIS TIME.**

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On the basis of a single request for a local service to a single local exchange carrier, which the carrier honored, and the General Counsel concluded was lawfully honored, the Commission has tentatively concluded that it should require all LECs to honor such requests. Beyond the one request for a three digit access code, no public interest factors which might justify expanding the regulatory burden on LECs are cited, nor are any self apparent.

The Commission's authority to regulate is premised on such findings. Section 201(a) makes it the duty of carriers to provide interstate service upon reasonable demand.

47 U.S.C. § 201(a). Here, no interstate service was requested, only (admittedly) local service, the request was honored, and there has been no conclusion that it would have been unreasonable to refuse the request.<sup>1</sup>

Section 201(b) requires carriers to follow just and reasonable practices and classifications and provides that the Commission may prescribe rules as necessary in the public interest to carry out the provisions of the Act. The NPRM contains no claim that it would be unjust or unreasonable for a carrier to refuse to make three digit codes available, nor does it explain why the public interest requires a mandate to all carriers to offer such codes. The Commission therefore has no

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<sup>1</sup>. The jurisdictional implications of regulating codes used solely for local calling are discussed at Part II, infra.

justification or authority to remove from the carriers the option to offer, or refuse to make available to their subscribers, service codes 211, 311, 511, 611 or 711 and 811.

The Commission acknowledges that LECs already have the option to make these codes available. It is the LEC that is in the best position to respond to the needs and demands of the subscribers in its local exchange area. There may be several reasons why refusal to allocate the codes may be perfectly reasonable. Perhaps most obvious is that with no more than six codes available, a LEC might well conclude that providing the code to one customer in an exchange would necessarily put other competing customers at a disadvantage. The LEC would be accused of unjust discrimination and would face poor customer relations. The fact that one LEC might choose this risk is no justification for compelling all LECs to do so.

A LEC might also have a valid concern that emergency services not be harmed by attempted calls to these codes by callers who inadvertently reach 911. The 9 digit on telephone key pads is surrounded by 5,6, and 8, the first digits in three of the service codes included in the proposed rule.

The Commission's proposal is inconsistent with the spirit of the President's moratorium on unnecessary regulations.<sup>2</sup> The Commission itself recognizes that LECs already have the authority to provide abbreviated dialing arrangements; and the Commission

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<sup>2</sup> See, Communications Daily, January 27, 1992, at 2 and March 13, 1992, at 3.

has responded to BellSouth's request for a declaration. Notice at 2. At most, the proposal should be incorporated in the proceeding in response to the NARUC petition.<sup>3</sup>

II. THE PROPOSED RULE WOULD RESULT IN PIECEMEAL RESOLUTION OF THE FORTHCOMING INQUIRY INTO THE NATIONAL NUMBERING PLAN

A Petition for Notice of Inquiry into the North American Numbering Plan ("NANP") was filed by the National Association of Regulatory Utility Commissioners ("NARUC") on September 26, 1991. The Notice states that the Commission plans to take up "broader numbering issues" in a separate proceeding, including those raised by NARUC. If the Commission plans to look at numbering issues broadly, it is not logical to first decide the issues in this proceeding because such decisions will necessarily foreclose some areas from the broad inquiry. For example, the resolution of this proceeding involves some basic (although unstated) assumptions regarding the role of the NANP, the authority of the Commission and the states, and the authority of the NANP administrator over independent LECs.

NTCA supported NARUC's request for a Notice of Inquiry because it believes that the shortage of NANP codes is an important issue upon which the Commission should remain adequately informed, consistent with Section 218 of the Communications Act. 47 U.S.C. § 218. However, NTCA pointed out in its Comments that it is not yet clear whether any Commission intervention is needed to address NANP code exhaustion.

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<sup>3</sup>. Notice at n.5.

**III. THE OFFERING OF THREE DIGIT CODES FOR LOCAL SERVICE CALLING IS NOT AN INTERSTATE SERVICE SUBJECT TO THE COMMISSION'S JURISDICTION.**

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The practice which the proposed rule would regulate is the assignment of certain N11 codes to LEC customers for use in connection with "local pay per call type information services." Notice, at 1. Nothing in the Notice indicates that the codes will be provided on an interstate basis.<sup>4</sup> The Commission's jurisdiction over interstate service includes mixed inter and intrastate services which cannot be separated into inter and intrastate components. The codes at issue here, however, are used solely for services wholly excluded from the Commission's jurisdiction by Sections 2(b) or 221(b). In this regard the issue is fundamentally different from that presented in the cases cited by the Commission as authority for its claim of "plenary jurisdiction." Notice, para. 8, and n.2

The Commission decided issues related to a refusal to make an assignment of a statewide three digit network access code ("NNX") in Referral of Questions from General Communication Inc. v. Alascom Inc., 3 FCC Rcd 700, 709 (1988) ("Referral"). However, in that matter, neither the referring court nor the Commission made a finding that the Commission had plenary jurisdiction over all numbering plan issues. The Commission decided the issue referred to it, *i.e.*, whether Alascom Inc. violated Sections 201(b) and 202(a) of the Communications Act, by

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<sup>4</sup> There is no evidence that BellSouth intends to offer any "interstate . . . communication service" or to seek federal tariffing of its service.

finding that Alascom neither acted unreasonably nor unlawfully discriminated against General by not assigning it a statewide NXX. The Commission said equal access was the real issue raised by General's complaint that lack of an NXX placed it at a competitive disadvantage vis a vis Alascom with respect to out-bound traffic. It then found that the assignment of an NXX code had nothing to do with equal access. Id.

The Commission did say that it has plenary jurisdiction over NXX codes in FCC Policy Statement on Interconnection of Cellular Systems, Appendix A to The Need to Promote Competition and Efficient Use of Spectrum for Radio Common Services 59 R.R. 1275, 1279 (1986) recon. granted in part, denied in part, 2 FCC Rcd 2910 (1987). (Ruling); further recon. granted in part, denied in part, 4 FCC Rcd 2369 (1989) (Interconnection). However, the issues in that matter involved interconnection between carriers, allocation and cost compensation matters related to the assignment of NXX codes and telephone numbers to competing cellular carriers rather than local exchange carrier assignment of codes and telephone numbers to its customers.

The Commission's proposal and assertion of plenary jurisdiction over numbering plan issues in this proceeding is not consistent with its decision and expressed policy in the cases discussed above. Referral did not address the issue of plenary jurisdiction. In Ruling and Interconnection, the Commission's basis for making the statement that it has plenary jurisdiction over the allocation of NXX codes was its conclusion that "[t]he

codes are an indispensable part of the 'facilities and regulations for operating [the] through routes' of physical interconnection as contemplated by Section 201 of the Act."

Ruling, 2912.

The conclusion that the Commission has jurisdiction over codes that cellular carriers need to complete interstate calls in no way supports jurisdiction over codes used solely for local calls. The NANP distinguishes the use of such codes and makes clear that their use is separate from the use of codes used to complete interstate calls. The Notice refers to this distinction, but does not complete the description of the Numbering Plan Area codes. Notice, paras. 4-7. The following statements from BOC Notes on the LEC Networks -- 1990, illustrate the distinction:

### 3.2 Number Plan Areas

Most NPAs . . . identify a geographic area  
. . . . Certain NPA codes in the format N00  
and N11 do not identify a geographic area . .  
. . [t]hose in in format N11 are called  
Service Codes.

#### 3.2.1 NPA Code Format and Capacity

The NANP specifies that codes of the format N 0/1X be used as NPA codes except for codes of the format N11, which are reserved for special functions. (Emphasis added.) This provides for a total of 152 NPA codes as follows:

Maximum NPA codes available with an N 0/1X format	160
Less reserved codes of N11 format	8
Total NPA codes <u>available for assignment</u>	152

(Emphasis added.)

#### 3.2.4 N11 Service Codes

Service codes serve various special functions . . . . As of mid-1990, service code assignments were as follows:

Code	Assignment
211	Unassigned
311	Unassigned
411	Local Directory Assistance
511	Unassigned
611	Repair Service
711	Unassigned
811	Business Office
911	Emergency

Any unassigned service codes, including 611 and 811 if they are phased out of service, will be kept available for future assignment by the NANP Administration Organization. Service Codes may be used locally if their assignment and use can be discontinued on short notice.

The Commission's proposal to regulate intrastate communications and thereby preempt the states by making rules requiring local exchange carriers to assign the service codes to customers for abbreviated dialing is neither consistent with the Communications Act nor the final outcome in Ruling.

Just as the intrastate costs were separable from interstate ones and there was no showing that state jurisdiction would negate a federal decision, here the use of the service codes is separable and does not interfere with interstate communication.

NTCA urges the Commission to abandon its assertion of plenary jurisdiction in this case and proceed in a fashion consistent with its decision in Interconnection, Section 2(b)(1) of the Communications Act, and court cases interpreting the limits of the Commission's preemption authority. In National



Ass'n of Regulatory Util. Comm'rs v. FCC, 880 F.2d 422 (D.C. Cir., 1989), the D.C. Circuit, citing Louisiana Public Service Commission v. FCC, 476 U.S. 355 (1986), explained that Section 2(b) of the Communications Act "fences off from FCC reach or regulation intrastate matters -- indeed, including matters 'in connection with' intrastate service." See also, California v. FCC, 905 F.2d 1217 (9th Cir. 1990) (California). These rulings make it inappropriate for the Commission to embroil itself in rulemaking that is in the jurisdiction of the states when it appears, as here, that jurisdiction is either completely in the realm of the state or within the jurisdiction of the federal government, as well as the states, and it appears that state regulation will neither interfere with nor thwart legitimate federal regulations aimed at regulating matters given to the federal government to regulate.

NTCA urges the Commission to refrain from issuing the rules. In this case, the Notice assumes plenary jurisdiction but fails to explain why assignment of local telephone numbers or dialing codes for access to local service providers is a practice solely within the federal jurisdiction. The Notice also fails to articulate any reason for effectively preempting state authority over all or any part of this practice which relates to intrastate communications services. The Commission has neither articulated the regulatory goals that would be achieved by preemption or indicated how these goals would be thwarted by state regulation. NARUC v. FCC, supra, at 429.

IV. CONCLUSION

For the above stated reasons, NTCA urges the Commission to terminate this proceeding on the grounds that it has no jurisdiction over the assignment of numbers used for local services, or in the alternative, that it will not preempt the states' authority over this local practice.

Respectfully submitted,

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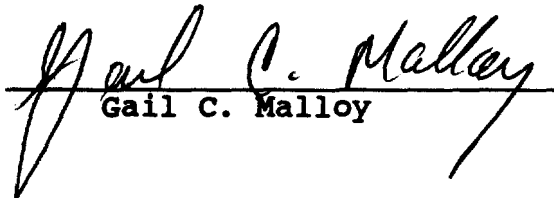
June 5, 1992

CERTIFICATE OF SERVICE

I, Gail C. Malloy, certify that a copy of the foregoing  
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